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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/404,245	09/22/1999	FRANK O. HARRIS	8675-5	8210

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EXAMINER

BEFUMO, JENNA LEIGH

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 08/19/2003

21

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/404,245	HARRIS ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Jenna-Leigh Befumo	1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 15 May 2003.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 17-21,23-25,27,28,30-33,49-59,63-65 and 67-89 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 17-21,23-25,27,28,30-33,49-59,63-65 and 67-89 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 15, 2003 has been entered.

### ***Response to Amendment***

2. Amendment C, submitted as Paper No. 20 on May 15, 2003, has been entered. Claim 22 has been cancelled. Claims 17, 27, 28, 30, 48, 59, and 63 - 65 have been amended and claim 89 has been added. Therefore, the pending claims are 17 – 21, 23 – 25, 27, 28, 30 – 33, 48 – 59, 63 – 65, and 67 – 89.

3. Amendment C is sufficient to overcome the 35 USC 103 rejection to claim 27 based on Makimura et al. or Gillespie et al. since both references fail to teach dyeing the fibers different colors. However, a new rejection has been set forth below.

### ***Claim Objections***

4. Claim 27 is objected to because of the following informalities: claim 27 depends on claim 1 which has been cancelled. However, the claim will be examined as if it depends on claim 17. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 17 – 21, 23 – 25, 28, 30 – 33, 63, and 65 stand rejected under 35 U.S.C. 102(b) as being anticipated by Makimura et al. (4,663,221) for the reasons of record.

7. Claims 17 – 21, 23 – 25, 28, 30 – 33, 48 – 59, 63 – 65, 67 – 75, and 82 – 89 are rejected under 35 U.S.C. 102(b) as being anticipated by Gillespie et al. (5,783,503).

Claims 17 – 21, 23 – 25, 28, 30 – 33, 48 – 59, 63 – 65, 67 – 75, and 82 – 88 are rejected for the reasons of record. Newly added claim 89 is also rejected based on Gillespie et al. since Gillespie et al. teaches that the bicomponent fiber can have a segmented pie shape which would produce triangular shaped filaments after splitting.

***Claim Rejections - 35 USC § 103***

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 76 – 79 stand rejected under 35 U.S.C. 103(a) as being unpatentable Gillespie et al. in view of Pike et al. (5,759,926) for the reasons of record.

10. Claims 79 – 81 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Gillespie et al. in view of Hagewood, “Ultra Microfibers: Beyond Evolution,” IFJ. pp 47 – 48, for the reasons of record.

11. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over rejected over Makamura et al. or Gillespie et al. in view of JP 05230776 A.

The features of Makimura et al. and Gillespie et al. have been set forth in the previous Office Action. Both references disclose multicomponent fiber bundles comprising two different types of fibers present in the fiber bundle. However, both references fail to teach dyeing the fibers different colors. JP 05230776 A is drawn to a fabric made from multiple types of fibers.

JP 05230776 A disclose a fabric made from fibers comprising different polymers and hence different dyeing properties. JP 05230776 A further teaches that different dye materials are required to dye each type of fiber. Finally, JP 05230776 A teaches that the fibers can be dyed different colors to produce different dye patterns in the finished fabric. Therefore, it would have been obvious to one of ordinary skill in the art to dye the different polymeric materials different colors as taught by JP 05230776 A, in the multicomponent material taught by Makimura et al. or Gillespie et al. to produce a decorative multi-color design in the final product. Therefore, claim 27 is rejected.

*Response to Arguments*

12. Applicant's arguments filed May 15, 2003 have been fully considered but they are not persuasive. The Applicant argues that the present claims are distinguished from Makimura et al. due to the fact that the Applicant makes the fiber bundle by dissolving a third component and the non-elastomeric fiber component should substantially surround the elastomeric fibers so as to cover the elastomeric filaments from view (Amendment C, page 6).

First, as set forth previously, the fact that the fiber bundle in Makimura et al. is made by dissolving a third component from a multicomponent fiber and not by splitting apart two components is a multicomponent fiber does not distinguish that present claim from the prior art since both inventions produce the same final product, a fiber bundle containing elastomeric and non-elastomeric fibers. The process limitations are only given weight in product claim when it has been shown that the process steps produce a structurally different product. The Applicant has not provided evidence that would show that the products produced by the two different products would indeed have structural differences.

Second, the Applicant bases the argument that the non-elastomeric fibers do not completely cover the elastomeric fibers on the hand drawn fiber bundle shown in Figure 4 of Makimura et al. The hand drawn figure is not necessarily to scale and even if the drawing were to scale, the other drawings (Figures 1 and 2) show the fiber bundle can have three times as many non-elastomeric filaments surrounding the elastomeric fiber than what is shown in Figure 2. Further, it is the Examiner's position that fiber bundles produced based on Figures 1 and 2 would indeed cover from view the elastomeric portion. Therefore, the rejections are maintained.

Finally, with respect to the Applicant's comments that Makimura et al. teaches only multicomponent configurations which would produce round filaments and not triangular shaped filaments (Amendment C, page 6), Makimura et al. has been applied to claims which either do not claim the shape of the individual filaments or claim the shape broadly enough that the claim reads on the fiber shape taught by Makimura et al.

13. The Applicant argues that the amendment to the claims requiring that the non-elastomeric components are drawn should overcome the rejections based on Makimura et al. and Gillespie et al., since the drawing imparts plastic deformation, which is not taught by the prior art (Amendment C, pages 6 – 7). However, both Makimura et al. (column 5, lines 5 – 6) and Gillespie et al. (column 2, lines 45 – 50) teach that the fiber can be drawn prior to separating the components. Thus, both references teaches that the fibers are drawn which would inherently plastically deform the non-elastomeric component. However, it appears that the Applicant is trying to further define what is meant by the term "plastic deformation". It appears that the Applicant teaches drawing the fiber without heating the fiber to deform the non-elastic filaments while only stretching the elastomeric filaments which will return to their original shape upon

release of the drawing tension. For the term "plastic deformation" to be given this definition, the Applicant must add the method limitations of drawing without heat to the claims since the drawn non-elastomeric fiber, while it is plastically deformed with or without the presence of heat, would have a different crystalline structure if it is drawn without heat. Additionally, the elastomeric filament would also have a different crystalline structure if it is drawn without heat. Without, any further limitations to define the plastic deformation of the non-elastomeric filaments, any deformation produced by drawing would read on the limitation.

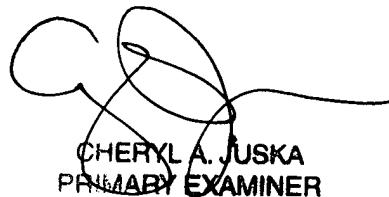
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (703) 605-1170. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Jenna-Leigh Befumo  
July 23, 2003



CHERYL A. JUSKA  
PRIMARY EXAMINER